Spirit Airlines Inc. v. 24/7 Real Media Inc. et al Doc. 56 Att. 61

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 07-60399-CIV-ALTONAGA/Turnoff

SPIRIT AIRLINES, INC.,

Plaintiff,

vs.

24/7 REAL MEDIA, INC., et al.,

Defendants.
_______________________________/

ORDER TRANSFERRING CASE

THIS CAUSE came before the Court upon Plaintiff, Spirit Airlines, Inc.'s ("Spirit['s]") Motion to Transfer Venue [D.E. 48], filed on May 17, 2007. In the Order of May 3, 2007 [D.E. 40], the Court noted that this case is a statutory interpleader action brought pursuant to 28 U.S.C. § 1335 and that venue is improper in this Court under the venue statute for statutory interpleader actions, 28 U.S.C. § 1397. Spirit has therefore moved, under 28 U.S.C. §§ 1404(a) and 1406(a), for an order transferring the case to the United States District Court for the District of Delaware.

Section 1406(a) provides that where venue for a case is improper in a district court, the district court "shall dismiss, or if it be in the interest of justice, transfer such case to any district . . . in which it could have been brought." Venue in this case is proper in the District of Delaware because several of the claimants are incorporated in, and thus "reside in," Delaware. *See* 28 U.S.C. § 1397 (providing that venue is proper in a statutory interpleader action in any judicial district in which one or more of the claimants resides).[1] The undersigned finds that it is in the interest of justice

[1] In order to transfer an action pursuant to 28 U.S.C. § 1404(a), venue must be proper in the transferor court. *See Van Dusen v. Barrack*, 376 U.S. 612, 634 (1964). Because venue is not proper in this Court, the undersigned may not rely upon 28 U.S.C. § 1404(a) in transferring this action.

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to transfer, rather than dismiss, this action given that Spirit's choice of improper venue appears to have been inadvertent and because a transfer will avoid the parties' having to re-file the relatively numerous pleadings they have already filed in this case. Accordingly, it is

ORDERED AND ADJUDGED that Spirit's Motion to Transfer Venue **[D.E. 48]** is **GRANTED**. This case shall be **TRANSFERRED** to the United States District Court for the District of Delaware.[2]

DONE AND ORDERED in Chambers at Miami, Florida, this 18th day of May, 2007.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

Copies provided to:
(1) Magistrate Judge William C. Turnoff
(2) Counsel of record

[2] In the May 3, 2007 Order, the Court noted that the deposit of the stake with the court is a jurisdictional requirement in a statutory interpleader action. *See* 28 U.S.C. § 1335(a)(2). There is some dispute in this case whether Spirit need deposit the amount it claims is in controversy or the higher amount that Defendant, Carrollton Bank, claims it is entitled to. Spirit and Carrollton Bank have filed a Stipulation [D.E. 47-2] providing that Spirit need only deposit the smaller amount. It is unclear whether the parties may waive the requirement that the stakeholder deposit the highest amount in controversy in the case. *See* 4 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE - CIVIL § 22.04[6][b] (noting that stakeholder is required to deposit highest amount in controversy). Given that venue is improper in this Court, the undersigned declines to resolve this issue and instead notes that the issue will need to be resolved, and Spirit's deposit made, once the transfer of this case is complete.